

***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+ W.P.No.15749 of 2007

% 26-09-2007

**# Adabala Raju and 32 others
Petitioners**

..

Vs.

**\$ The State of Andhra Pradesh
Rep. by its Secretary,
Endowments Department,
Secretariat, Saifabad, Hyderabad
And 4 others
Respondents**

..

<GIST:

>HEAD NOTE :

! Counsel for Petitioners :- Sri Ganga Kumar

**^ Counsel for R.1 to R.3: A.G.P. for Endowments
Counsel for R.4 :- Sri V.T.M.Prasad
Counsel for R.5 :- Sri Yadagiri Rao**

^CASES REFERRED :

1. 2006 (6) ALT 173

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.15749 of 2007

Date: 26th September, 2007

Between :-

Adabala Raju and 32 others .. Petitioners

And

The State of Andhra Pradesh
Rep. by its Secretary,
Endowments Department,
Secretariat, Saifabad, Hyderabad
And 4 others

.. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.15749 of 2007

ORDER:-

This Court ordered *notice before admission* and while permitting the Counsel for petitioners to serve notice on respondents, it was further ordered *pending further orders, the proposed auction may go on but the same shall not be confirmed*. Subsequent thereto, after a couple of adjournments, this Court issued *rule nisi* on 7-9-2007. The 4th respondent filed a W.V.M.P.No.2087/2007 praying for the vacation of the interim order dated 24-7-2007 referred to supra. The 5th respondent also filed counter affidavit.

2. Though the matter appeared under the caption of Interlocutory, the learned Counsel representing the respective parties made a request for the disposal of the Writ Petition itself and thus with the consent of the Counsel on record, the Writ Petition itself was taken up for final disposal.

3. The petitioners filed the present Writ Petition praying

for a Writ of Mandamus declaring the action of the respondents in not extending the lease in favour of the petitioners herein as they are cultivating tenants of the land in question in an extent of Ac.53 situated in Sy.Nos.51, 52, 73, 74, 75, 94, 95, 96, 101, 102 and 144 of Eluru village, Prathipadu Mandal, East Godavari District and issuing auction notice dt.5-7-2007 by the 4th respondent Temple for conduct of auction schedule to be held on 27-7-2007 as arbitrary, illegal, unjust, violative of principles of natural justice, contrary to the A.P.Charitable & Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rule 2003 and also violative of the fundamental rights guaranteed to the petitioners under Article 14 of the Constitution of India and for consequential reliefs and set aside the same by further directing the respondents to consider the lease in favour of the petitioners as cultivating tenants by enhancing the lease amount and to pass such other suitable orders.

4. Sri Ganga Kumar representing Sri Prabhakar, the learned Counsel representing the writ petitioners had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and the averments made in the respective counter affidavits and also certain admissions made in the counter affidavit of

the 5th respondent and also further had taken this Court through several of the cist receipts and the relevant provisions of the A.P.Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter would be referred to as 'Act' for the purpose of convenience) and also the A.P.Charitable & Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rule 2003 (hereinafter in short would be referred to as Rules for the purpose of convenience) and would maintain that despite the fact that all these petitioners are small farmers and landless poor persons and cultivating tenants for sufficiently a long time and despite the fact that several representations were made in this regard, which are pending disposal, the 4th respondent Temple is further proceeding with the conducting of auction and the same is illegal, unjust and violative of principles of natural justice and also contrary to the provisions of the Act and the Rules and hence the Writ Petition to be allowed.

5. The learned A.G.P. for Endowments representing R.1 to R.3 would submit that in the light of the specific stand taken in the counter affidavit of the 4th respondent it is clear that there is no acceptable material to establish that the petitioners are entitled to the benefits under the provisions of the Act and the Rules and hence the action

of the 4th respondent is well justified.

6. Sri V.T.M.Prasad, the learned Counsel representing 4th respondent had taken this Court through the contents of the counter affidavit and would maintain that the petitioners approached this Court with several false averments as can be seen from the affidavit filed in support of the Writ Petition and even if the cist receipts and other material to be taken into consideration, nothing is available on record to show the lessor and lessee relationship and these are not cultivating tenants and there is no approved lease as such and even otherwise these are not landless poor persons and small farmers, at any rate, in the light of the respective stands taken by the parties, it is clear that even if the material to be taken into consideration, the same would not confer the status of tenants on the writ petitioners and hence inasmuch as the impugned order made by this Court is causing lot of prejudice and is detrimental to the interest of the Institution, the same to be vacated and the Writ Petition to be dismissed.

7. Sri Yadagiri Rao, the learned Counsel representing 5th respondent had taken this Court through the counter affidavit filed by the 5th respondent and made certain submissions tracing the historical background of the

Institution and also in all fairness submitted that at some point of time though not the whole extent, certain portions had been in possession of the writ petitioners.

8. Heard the Counsel, perused the respective pleadings of the parties and also the records.

9. It is stated by the writ petitioners that the 5th respondent is the hereditary Trustee of Arempudi Choultry, which is an endowment under the Endowments Act and the same was established in the year 1940 for purposes of providing lodging and boarding facilities to the pilgrims visiting the Annavaram Sri Veera Venkata Satyanarayana Swami Varu and the other surrounding Temples and the ancestors of the 5th respondent endowed the land in question in favour of the choultry, whereas, their ancestors used to cultivate the land and pay the lease amount to the choultry and the lease proceeds were being used for the purpose of meeting the expenditure for providing boarding and lodging facilities to the pilgrims. It is also stated that their ancestors were asked to cultivate the land by the ancestors of the 5th respondent and paying lease amount to the choultry and accordingly, their ancestors were put in possession and enjoyment of the land for more than six decades and the lease amount is being paid to the choultry and the said

practice is being followed even in their time. It is further stated that the petitioners herein and their ancestors, who were in possession of the land in an extent of Ac.53 in Sy.No.51, 52, 73, 74, 75, 94, 95, 96, 101, 102 and 144 of Eluru village, used to pay the land revenue with the revenue authorities. It is also stated that while so, the manager of the 5th respondent filed batch of ATCs against the petitioners in the year 1980 on the ground that they were in default in paying the lease amount and sought for their eviction and the same was dismissed and against which the 5th respondent filed an appeal in ATA in the year 1981 and that was allowed and aggrieved by the same, the writ petitioners filed a Writ Petition on the file of this Court in 1982 and the same was allowed saying that the writ petitioners cannot be evicted only on the ground that the rental dues were paid to unauthorized person i.e., agent of the 5th respondent and the said order was dt.23-12-1986 and subsequently, they have been in continuous possession and enjoyment of the land in question without any interruption for all these years. It is also further stated that while the matters stood thus, in the year 2004, the respondent enhanced the lease amount to 8 bags per acre and the petitioners agreed for the same and are paying the enhanced lease amount and that was also

accepted by the 5th respondent and as of now, all the petitioners are paying the lease @ 8 bags per acre. It is also stated that the land in question does not have any feeder canals and they are based on the monsoons and therefore, the yield per acre is 20 bags per acre, out of which, all the petitioners are paying 8 bags per acre from the year 2004 onwards. It is also further stated that the 5th respondent said to have surrendered the lands in question to the 4th respondent Temple and seems the same was accepted by the 2nd respondent. It is also stated that in fact, the authorities ought to have issued a notice to the petitioners as they are the affected parties and cultivating tenants, but however, for obvious reasons, the respondents have not issued any notice and accepted the offer made by the 5th respondent and got issued auction notice dt.4-6-2007 and the said action of the respondents is highly illegal and unjust and violative of the principles of natural justice. It is further stated that at the time of adopting the lands by the 5th respondent to the 4th respondent, the petitioners were not put on notice. It is also stated that the respondents did not choose to issue any notice to the affected parties though they were in possession of the land being the cultivating tenants for the past more than six decades. It is also further stated that

while matters stood thus, the 4th respondent issued a notification on 4-6-2007 while fixing a date to conduct auction on 28-6-2007. It is also stated that after noticing the same, the petitioners made a representation to the 3rd respondent on 5-6-2007 to extend the lease as all of them are small and marginal farmers, if necessary by enhancing the rent as per the provisions of Section 82(2) Proviso (i) of the Act and the said representation is pending before the 3rd respondent who is the competent authority to extend the lease in their favour. It is further stated that inspite of the representation made before the 3rd respondent, he did not choose to pass any orders and then the petitioners constrained to approach the 2nd respondent by way of a representation dt.27-6-2007 and considering the same, the 2nd respondent postpone the auction while directing the authorities to conduct an enquiry by an order dt.27-6-2007. It is also stated that in the said order, though the respondents are directed to conduct an enquiry, they did not do so for obvious reasons and the representation made before the respondents 2 and 3 are still pending. It is further stated that without considering the affect of the same, the 4th respondent issued auction notice dt.5-7-2007 fixing the

auction scheduled to be held on 27-7-2007 and noticing the same, the petitioners made yet another representation to the 4th respondent on 6-7-2007 but however, the 4th respondent did not choose to pass any orders and then, they gave another representation to the 2nd respondent on 20-7-2007. It is further stated that the 2nd respondent also did not pass any orders even as on date and since the auction is scheduled to be held on 27-7-2007, the petitioners constrained to approach this Court by way of the present Writ Petition having left with no other effective alternative remedy to redress their grievances. It is also further stated that the auction notice, which is impugned in this Writ Petition, is not in accordance with the procedure prescribed under Rules issued in 2003, wherein, the procedure prescribed is in Rule 10 of the Rules and hence, the auction notification is liable to be set aside. It is also further stated that the power is vested with the competent authority i.e., the 2nd respondent to extend the lease under Rule 16 of the Rules, 2003 and the said power is, however, not exercised by the authorities despite their representations pending with the said authority but however the respondents proceeded further with the impugned auction notice in an hurried manner only with a view to evict the petitioners from the land in

question somehow or the other and hence the action of the respondents in not considering the extension of lease in their favour by virtue of the powers conferred on the respondents under Rule 16 of the A.P.Charitable & Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rule 2003 and issuing the auction notice is not only illegal, but also amounts to arbitrary exercise of power and violative of the fundamental rights guaranteed under Article 14 of the Constitution of India. It is also stated that as per Rule 16(3) there is a deeming provision of extending the lease and by virtue of the same, the petitioners are entitled to continue in possession of the land in question as tenants since the representation made by the petitioners is before the competent authority i.e., the 2nd respondent seeking to extend the lease is pending and therefore, the impugned action of the respondents in conducting auction without considering their case is highly illegal, unjust and contrary to the Rules itself. It is also stated that the petitioners as of now are in possession and enjoyment and they are ready and willing to pay the agreed amount, if necessary, by enhancing the lease amount as decided by the authorities reasonably.

10. In the counter affidavit filed by the 4th respondent it

is averred that the land in question admeasuring Ac.53-00 situated in Sy.Nos.51, 52, 73, 74, 75, 94, 95, 96, 101, 102 and 144 of Eluru village, Prathipadu Mandal, E.G. District belongs to Arampudi Choultry of Annavaram village, Sankavaram Mandal, E.G.Dist which in turn is an adopted institution of the 4th respondent Temple. It is further averred that Arempudi Choultry, more popularly called as Kirlampudi Choultry, Annavaram village, East Godavari District, was constructed sometime in the year 1875 by the 5th respondent ancestors for the purpose of providing free accommodation and food to the way-fares proceeding from Kasi (Varanasi) to Kanyakumari. It is also stated that the Choultry building had 12 rooms and a dining hall and subsequently another 7 rooms were constructed on its southern side and the Choultry is endowed with landed property of Ac.55.51 cents (Wet) and Ac.48.11 cents (Dry) situated the Eluru village, Prathipadu Mandal, E.G.District. It is further stated that the Choultry had an annual income of Rs.3,500/- from the persons cultivating the entire extent of about 103 acres of land owned by and endowed in favour of the said Choultry. It is also further stated that petitioner No.16 cultivating the lands bearing S.Nos.95, 96 and 102 measuring Ac.5.31 cents, used to pay Rs.30/- per acre as

rent till 1995-96 and steps for leasing out the said lands admeasuring Ac.5.31 cents were taken. It is further stated that the petitioner No.16 obstructed the public auction and offered to pay the annual rent at the rate of 6 bags of paddy per acre. It is also stated that due to the pressure brought on this respondent by the local Public Representatives who created all possible obstacles in conducting public auction and as the petitioner No.16 offered to pay the annual rent at the rate of 6 bags of paddy per acre, from the year 1996-97, the 5th respondent had no other alternative but to accept the offer made by the petitioner No.16 and postpone the public auction. It is also further stated that the allegations that the petitioners are cultivating the land in an extent of Ac.53.00 in S.Nos.51, 52, 73, 74, 75, 94, 95, 96, 101, 102 and 144 of Eluru village is false and in fact, the petitioners were in possession as cultivators over an area of Ac.28.10 cents only in the said survey numbers, other than and except the lands bearing S.Nos.73, 74 and 75. It is also stated that as the petitioners were paying very meager rent in respect of the lands, and 5th respondent being a lady, who was finding it difficult to manage the endowed properties, applied to the Commissioner for grant of permission for the adoption of the said Choultry by Sri

Venkateswara Swamy Devasthanam, Dwaraka Tirumala.

It is further stated that the Commissioner, Endowments Department, Hyderabad by his orders dated 26-6-2006 in D.Dis.No.A3/25242/056 ordered the said adoption for a period of three years. It is also stated that on the local political representatives approaching the Government, the Government by its orders dt.14-7-2006 contained in Govt.Memo No.29747/Edts.IV(2)/2006-1 passed stay orders staying the operation of the orders passed by the Commissioner, Endowments Department, Hyderabad. It is also stated that the 5th respondent had filed W.P.No.15456/2006 questioning the competence of the Government in issuing the stay orders dt.14-7-2006 and this Hon'ble Court by orders dt.27-7-2006 in W.P.No.15456/2006 suspended the orders dt.14-7-2006 passed by the Government while specifically observing that the orders dt.26-6-2006 passed by the Commissioner, Endowments Department, shall be operational without let or hindrance and again by orders dt.10-4-2007 this Court passed orders that the interim order passed by this Court on 27-7-2006 shall continue and this Court also makes it clear that pendency of the Writ Petition shall not preclude 4th respondent from auctioning the leasehold rights of the agricultural lands in

accordance with Section 82(3) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 read with the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003. It is also further stated that in this connection 4th respondent shall take necessary steps immediately after ascertaining the actual land which was in possession of the Kirlampudi Choultry. It is further stated that the action for public auction of leasehold rights of the agricultural lands belonging to the Choultry, initiated by this respondent through auction notice dated 5-7-2007 was in compliance of the directions issued by this Court in its orders dated 10-4-2007 in W.P.No.15456/2006. It is further stated that the said public auction conducted by this respondent is also in compliance with the orders dt.27-7-2007 in L.Dis.No.L2/28650/2007 passed by the Commissioner, Endowments Department, Hyderabad and that the action of this respondent for conducting the auction is neither arbitrary, illegal, unjust nor violative of principles of natural justice nor even contrary to the Lease of Agricultural Lands Rules, 2003. It is also further stated that the 5th respondent was recognized as member of Founder's Family of the said Choultry by the Asst.

Commissioner, Endowments Department, Rajahmundry by his orders dated 22-10-1996 in Rc.No.A5/9497/96. It is also stated that the allegation that the said Choultry was established in 1940 for the purpose of providing lodging and boarding facilities to the pilgrims visiting Annavaram Sri Veera Venkata Satyanarayana Swami Vari Temple and the surrounding Temples, is false. It is further stated that the said Choultry was established even prior to 1877, at which point of time, Sri Veera Venkata Satyanarayana Swamy Temple was not even founded. It is also stated that the contention of the petitioners that their ancestors were asked by the ancestors of the 5th respondent, to cultivate the lands and the petitioners are following the same procedure, even now, has no legal sanctity inasmuch as the leasehold rights are not heritable and the provisions of Tenancy Act, do not confer any rights and the Tenancy Act is not applicable to the Temple and Endowments lands. Further it is stated that the orders dt.23-12-1986 in W.P.No.2307/85 and batch, were passed in the matter concerning the default of payment of rents prior to 1980. It is also stated that the observations made while disposing of the said Writ Petition and the batch cannot have any bearing on any subsequent defaults made by the cultivating tenants. It is also further

stated that the petitioners 2 and 3 and three others had filed a letter on 6-10-2004 depositing Rs.27,200/- through D.D. offering to pay rent at the rate of 8 bags per acre per annum, with a specific understanding that the same may be returned in the event of the same is not acceptable by the 5th respondent and similarly the petitioners 1, 5 and 6 deposited Rs.28,000/- with the same understanding and petitioners No.7 to 9, 11, 12 and 14 and two others deposited Rs.29,600/- with the same understanding. It is also stated that the 5th respondent had forwarded the said applications to the respondent No.3 and the respondent No.3 did not pass any orders approving the lease on the said applications. It is further stated that the petitioners to above had only deposited rent for one year, the question of its return or accepting the status of those petitioners as tenants, did not arise and further, as the proposal made by the petitioners, referred to above, was not approved by the competent authority sanctioning lease, even by the lapse of the agricultural year 2004-2005, the petitioners, referred to above, cannot be treated as tenants, but have to be treated as encroachers and illegal occupants. It is further stated that much less, the petitioners, referred to above, can be categorized as landless poor persons and they are not entitled to claim benefits under Section 82 of

A.P.Act No.30 of 1987. It is also further stated that the petitioners have falsely alleged that all the petitioners are paying the lease at 8 bags per acre per annum from the year 2004. It is also stated that it is only the petitioners No.1, 2 and 7 who have paid the lease at 8 bags per acre, per annum, for the years 2004-2005 and 2005-2006 and they did not pay the rent for the year 2006-2007 and have, as such, committed default in payment of rent. It is further stated that the petitioner No.16 paid the lease at 6 bags per acre, per annum, for the years 2004-2005 and 2005-2006 and has not paid the rent for the year 2006-2007, which was due to be paid by 31-3-2007. It is also stated that excluding the petitioners No.1, 2, 7 and 16 who were the original tenants, rest of the petitioners did not pay the lease amount or the paddy at the rate of 8 bags per acre per annum for the year 2006-07 and previous years also. It is further stated that the Asst. Commissioner, Endowments, Rajahmundry in his orders M.A.No.334 of 2004, dt.4-11-2004 rejected the claim of the petitioner No.7 in R.S.No.94, 101 and extent of Ac.9.29 cents as a declaration as landless poor when he approached him on his own and similarly in M.A.No.332 of 2004 dated 3-11-2004 the claim of Smt.Kotipalli Seetha Maha Lakshmi, who is not petitioner herein, to declare her as landless poor was rejected by the Asst. Commissioner for an

extent of Ac.23.10 cents in wet land in R.S.No.73, 74 and 75 and 51, 51/1, 52 which is now under occupation by the petitioners. It is also further stated that the petitioners have falsely alleged that all the petitioners were cultivating tenants for the past more than 60 years and they do not have approved lease for six years prior to the commencement of Act 30/87 nor at any time after that years. It is also stated that as the petitioners were illegally occupying the lands, without there being any lease approved by the competent authority, this respondent is not duty bound to issue any notice of its acceptance of the adoption of the 5th respondent Choultry. It is also further stated that the petitioners are not approved lessees. It is also stated that the request of the petitioners said to have been made to the 3rd respondent in their representation dated 5-6-2007 to extend the lease on the ground that they are small and marginal farmers, was rightly rejected by the Asst. Commissioner – the 3rd respondent because the petitioners claiming extension of lease were not originally approved tenants and as such the lease in their favour could not be extended. It is further stated that the request of the petitioners to consider their claim that they are small and marginal farmers could not have been considered because the status of actual lessee of the

land has to be taken into consideration but not of any other factor and that further all the petitioners cannot be taken for granted as cultivating tenants, as the expression used in the Endowment Lease of Agricultural Lands Rules, 2003, would confine only to actual lessee and not all the persons, who might be cultivating the land by private negotiations. It is also further stated that the action taken by the 4th respondent is in strict compliance of the directions issued by the Hon'ble High Court in its order dated 10-4-2007 in W.P.No.15456 of 2006 and the directions issued by the Commissioner in his orders dated 27-7-2007. It is further stated that this respondent issued the Auction Notice dated 5-7-2007 and also circulated terms and conditions of the auction in strict compliance of the Rule 10 of Endowments Lease of Agricultural Lands Rules, 2003 and the auction proceedings issued by this respondent are in compliance of the said Rules. It is also further stated that only the names of the petitioner No.1, 2, 7 and 16 are found in Demand Collection Balance (D.C.B.) Register and the other petitioners claim to be the members of their respective family and claim to be the cultivators of different portions of the lands either by virtue of family partition effected or otherwise. It is further stated that there is no approved lease even for petitioners 1, 2, 7

and 16 and their names are found in the D.C.B. Register as they were given receipts for the maktha, they paid to the previous management. It is further stated that the decision of the question of status of landless poor has to be taken considering the status of the actual lessee and not any other person. Further it is stated that the benefits under Section 82 of the Act are available only if a person is a lawful cultivating tenant having obtained lease after a process of public auction as stipulated under the statutory rules governing the grant of lease of agricultural land belonging to the religious and endowment institutions. It is also further stated that the petitioners are not entitled to claim the status of lawful cultivating tenants, because (i) the petitioners are not the lessees duly approved by the competent authority, (ii) by mere depositing Makhtas received either by the Manager or a Trustee or the Endowments Department. It is also stated that the petitioners being unlawful occupiers or cultivators are neither entitled to the benefits under Section 82 of the Act nor to a declaration that they are landless poor persons, within the expression under Section 82 of the Act. It is also stated that the public auction conducted by this respondent, the highest bid amount offered by 23 different persons for different units of lands of 103 acres 62 cents was Rs.6,12,000/- for one year and the total amount for

three years is Rs.18,36,000/- and in addition to this, the highest bidders have deposited an amount of Rs.1,03,620/- as security which is returnable without any interest after the expiry of lease period of 3 years. It is further stated that the highest bid offered this year being Rs.6,12,000/- for one year is more than double the lease amount, the earlier cultivators had agreed to pay but some of them failed to pay even the agreed amount. This is the stand taken by the 4th respondent in the counter affidavit.

11. In the counter affidavit filed by the 5th respondent, substantially, the same stand had been taken which was taken by the 4th respondent.

12. The Counsel for petitioners also placed before this Court certain Amendments proposed to the Rules and the Preliminary Notification – G.O.Ms.No.1034, Revenue (ENDTS.I), dated 27-7-2007. The Counsel also placed strong reliance on Rc.No.A3/10876/2003, dt.8-3-2005 and the said proceeding reads as hereunder:-

*Office of the Assistant Commissioner,
Endowments Department, Rajahmundry.*

Rc.No.A3/10876/2003, dt.8-3-2005

*Sub:- Endowments Department – Charitable –Sri
Arapudi*

*Choultry – Arempudi village – Sankhavaram
Mandal – East Godavari District – Demand Draft
for Rs.68,000/- received from Smt.Kotipalli Sitha
Mahalaxmi and three others – sent –*

acknowledgement – called for.

*Ref:- Letter dt.24-2-2005 from Smt.Kotipalli Seetha Mahalaxmi
and three others.*

** * **

In the reference cited, Smt.Kotipalli Seethamahalaxmi, Sri K.Ramakrishna and Smt. Manupati Ammani and Smt.Chedalawada Chinadevi of Porathipadu village, East Godavari District have sent two Demand Drafts bearing No.593023, dt.25-2-2005 for Rs.34,000/- and D.D.No.593024 dt.25-2-2005 for Rs.34,000/-(Totally Rs.68,000/-) obtained in favour of Arempudi Choultry, Anavaram village towards deposit of one year maktha and they have stated that the Executive Authorities of the Choultry are not available in the village for payment.

Hence, the above two Demand Drafts and a copy of letter received in the reference cited is herewith sent to the Founder Trustee of Sri Arempudi Choultry, Annavaram village for taking further action.

The Founder Trustee of the subject Choultry is requested to acknowledge the receipt of the above two Demand Drafts by return of post without fail.

*Sd/- B.Venkataswamy,
Assistant Commissioner.*

Further reliance had been placed on several of the cist receipts and the other material to show the factum of possession. It may be that in the light of the respective stands taken in the counter affidavits, at a particular point of time the petitioners might have been in possession of

certain extents though there is some controversy relating to the actual extent which is said to be in possession of the respective petitioners or all the petitioners as a whole. Be that as it may, the principal question to be decided in the present Writ Petition is that whether the petitioners can claim the status of tenants for the purpose of claiming benefits under the relevant provisions of the Act and the Rules specified supra. Strong reliance was placed on Rules, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 and 19 of the Rules and elaborate submissions were made in relation thereto on the strength of the material available on record. The Division Bench of this Court in **Katta Naga Malleswararao and another v. Government of Andhra Pradesh, rep. by its Secretary, Revenue (Endowments) Department, Secretariat, Hyderabad and 2 others (W.A.NO.1302/2003)** observed that *“as a matter of fact, direction of learned single Judge is very clear that for the purpose of deciding the question as regards status of the landless poor, it is the status of the actual lessee of the land which has to be taken into account and not of any other person. The inter se family partition effected between the members of the family will be of no consequence. It is the relationship between the lessor and lessee, which is the sine qua non. Therefore, only the status of the actual lessee will be taken into*

consideration and the words used in sub-rule (2) of Rule 3 of the above Rules i.e., 'cultivating tenant' would confine only to actual lessee and not all persons, who might be cultivating the land by private negotiations." Reliance also was placed on ***Ganapathi Ramakrishna V. The Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada, A.P. and 5 others (W.P.No.17281/2003)*** dt. 21-8-2006 wherein the learned Judge observed that *"the 2nd respondent should bear in mind that the benefits under Section 82 of the Act are available only if a person is lawful cultivating tenant having obtained lease after a process of public auction as stipulated under the relevant statutory rules governing grant of leases of agricultural lands belonging to the religious and endowment institutions and if such person owns or is in cultivation of lands in accordance with the limit specified in Section 82 of the Act. A person does not become a lawful cultivating tenant by merely depositing Makthas which are received either by the Manager of a Trustee of the Institution or even by the officials of the Endowments Department. Defendants facto occupation or cultivation of lands due to the negligence or connivance of the Endowments Department Officers does not elevate the status of such occupier to a lawful cultivating tenant*

and such unlawful occupier or cultivator is neither entitled to the benefits under Section 82 of the Act nor to a declaration that he/she is landless poor person within the expression under Section 82 of the Act.” Reliance also was placed on **DEGA BABI REDDY v. GOVERNMENT OF A.P.**^[1] and the learned Judge at paras 2, 3 and 4 observed as hereunder:-

The petitioners claim to have been in possession of these lands, to be cultivating it, to be raising paddy crop and paying annual Maktha regularly to the Charitable Institution, since long the leases are stated to have been orally granted in 1980. The petitioners do not plead, establish or demonstrate that they are the lawful cultivating tenants of the 3rd respondent institution's lands, on the basis of duly executed lease deeds.

Rule 7 of the A.P.Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules') and the provisions of similar rules earlier to these; whether made under the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1966 or under the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the New Act'), as well as the general principles of Administrative Law and authoritative precedents, obligate Endowment properties to be alienated including by way of lease only by a transparent public process in a manner which would ensure the fetching of a competitive return on Endowment properties and not by clandestine and sub-rosa private understanding between Endowment Officers

or managers of temples and private individuals. The unauthorized occupation of the Endowment lands by the petitioners without a lease deed executed in their favour by or on behalf of the Endowment after following the due process or law; substantive and procedural, would not elevate occupation of the petitioners to the status of cultivating tenants as understood by the provisions of the New Act. Cultivating Tenant in Section 82 of the New Act must be understood to denote cultivating tenant under a lawful duly executed lease and not one that is the product of ultra vires conduct of the State actors in defiance of the legislative mandate (BHUDAN SINGH v. NABI BUX (1969) 2 SCC 481 – paras 12 AND 13). There is no exclusion in this principle by the mere fact that the petitioners are in such an unauthorized occupation since 1980 or times immemorial. The petitioners do not claim any prescriptive title or ownership to the lands in question.

In the circumstances above, as the petitioners are not cultivating tenants within the meaning of the said expression qua Section 82 of the New Act or the Rules, the petitioners cannot be considered to be landless poor persons for the benefits under Section 82 of the Act. As they are encroachers, as is apparent, they cannot resist the impugned notification issued by the 3rd respondent – Charitable Institution, proposing conduct of a public auction for grant of leasehold rights of its lands. The petitioners have no locus standi to claim any such relief.”

13. In the light of the views expressed by the Division Bench of this Court and also the learned Judge of this

Court, referred to supra, even if the respective pleadings of the parties, the respective stands taken by the parties and the whole material placed before the Court, if carefully examined, this Court is satisfied that in the facts and circumstances it cannot be said that the status of a tenant can be conferred on these petitioners in the absence of approved leases in accordance with the provisions of the Act and the Rules referred to supra and when the writ petitioners do not satisfy the necessary essentials to be satisfied so as to attract the status of the tenants as such, it is needless to say that the mere fact that the writ petitioners are able to show that at some point of time the petitioners or their family members had been in possession of certain extents, by that itself the writ petitioners cannot claim any legal right as such and hence this Court is satisfied that in the absence of acceptable material placed before this Court in this regard, the writ petitioners are bound to fail. Accordingly, the Writ Petition shall stand dismissed. It is needless to say that the interim order made by this Court stands vacated since the Writ Petition itself is being dismissed by this Court being devoid of merit. However, in the light of the respective stands taken by the parties, the parties to the litigation to bear their own costs.

Justice P.S.Narayana

Date : 26th September, 2007

Note: L.R. Copy to be marked (YES / NO)

smr

[\[1\]](#) 2006 (6) A.L.T., 173